

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petitions: 52-011-14-1-5-00804-18
52-011-15-1-5-00803-18
52-011-16-1-5-00802-18
Petitioner: Pedro J. Nieto
Respondent: Miami County Assessor
Parcel: 52-16-32-100-005.000-011
Assessment Years: 2014, 2015, and 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nieto filed appeals challenging the Miami County Auditor’s removal of the homestead deduction¹ he received in 2014, 2015, and 2016 for his property located at 805 East Wabash Street in Converse. The Miami County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations upholding the removal.
2. Nieto timely filed Form 131 petitions with the Board for all three years. On December 11, 2018, Joseph Stanford, our designated administrative law judge (“ALJ”) held a consolidated hearing on the petitions. Neither he nor the Board inspected Nieto’s property.
3. Nieto appeared pro se. The Assessor² appeared by attorney Stephen Downs. Mary Betzner, Settlement Deputy for the Miami County Auditor, and Nieto were sworn and testified.

RECORD

4. The official record for this matter is made up of the following:
 - a) Exhibits:

Petitioner Exhibit 1:	Picture of a mural created by Nieto with a description
Petitioner Exhibit 2:	Nieto’s Indiana driver’s license
Petitioner Exhibit 3:	Certificate of Appointment for the Knights of Columbus

¹ The parties used the terms “homestead exemption” and “homestead deduction” interchangeably when referring to the standard deduction for homesteads provided for by Ind. Code § 6-1.1-12-37. We will use the term “homestead deduction.”

² While the Auditor is the official charged with approving or denying homestead deductions, the Assessor is the party to the review before the Board. Ind. Code § 6-1.1-15-3(b).

- Petitioner Exhibit 4: Letter from Chijioke Al Chigbo, dated July 6, 2018
 Petitioner Exhibit 5: Letter from Randall Miller, dated June 26, 2018
 Petitioner Exhibit 6: Letter from Mary H. Wheeler, dated June 28, 2018
 Petitioner Exhibit 7: Letter from Roger Bowland, dated June 28, 2018
 Petitioner Exhibit 8: Email from the Fellowship of Catholic University Students, dated July 8, 2018
 Petitioner Exhibit 9: Letter from Juan A. Nieto, dated July 7, 2018
 Petitioner Exhibit 10: Letter from Victor M. Nieto, dated July 3, 2018
 Petitioner Exhibit 11: Letter from Lucas Nieto
 Petitioner Exhibit 12: Email from Duke Energy, dated July 25, 2018
 Petitioner Exhibit 13: Letter from Laurie Byrd of Afena Federal Credit Union
 Petitioner Exhibit 14: "History Printout" from the Town of Converse
 Petitioner Exhibit 15: Letter from Vectren Corporation, dated July 5, 2018
 Petitioner Exhibit 16: Letter from Jodi Pomeroy, dated July 5, 2018
 Petitioner Exhibit 17: Letter from Donald A. Rothbaum, dated June 28, 2018
 Petitioner Exhibit 18: Application for Post Office Box, date-stamped August 29, 2011, with a hand-written note from the Postmaster
 Petitioner Exhibit 19: Email from Lynn Hess, dated June 25, 2018
 Petitioner Exhibit 20: Letter from Kayla Parr, dated June 26, 2018
- Respondent Exhibit A: Miami County Auditor's transfer report for Nieto's property
 Respondent Exhibit B: Nieto's homestead deduction claim, filed August 17, 2012
 Respondent Exhibit C: Property details for Nieto's property in Hildago County, Texas
 Respondent Exhibit D: Audit questionnaire
 Respondent Exhibit E: Letter from Esther Gutierrez of Hildago County, dated December 27, 2017
 Respondent Exhibit F: Nieto's notice initiating a 2014 appeal
 Respondent Exhibit G: Nieto's notice initiating a 2015 appeal
 Respondent Exhibit H: Nieto's notice initiating a 2016 appeal
 Respondent Exhibit I: Letter to Nieto from Betzner, dated January 2, 2018
 Respondent Exhibit J: Letter to Nieto from Betzner, dated February 21, 2018

- b) The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

SUMMARY OF CONTENTIONS

5. Nieto's case:

- a) Nieto lived in Converse, Indiana until his retirement from General Motors. He had raised his children in Converse, and they graduated from high school there. After retiring from GM, Nieto moved to McClelland, Texas, where he lived for five or six

years. Nieto sold the property in McClelland and purchased the property in Converse to be near his ill son. Since that time, Nieto has lived in Converse for part of the year, and has spent the winters in his house trailer in Pharr, Texas. *Nieto testimony.*

- b) Because Nieto was in Texas during elections, he continued to vote in Texas. He also filed his taxes in Texas. Nieto initially kept his Texas driver's license as well, but he eventually obtained an Indiana driver's license. And based on advice Nieto received from a government employee in Texas, he claimed a deduction similar to Indiana's homestead deduction on his house trailer in Texas. *Nieto testimony; Pet'r Ex. 2.*
- c) In 2014, 2015, and 2016, Nieto received the deduction for his house trailer in Texas. During those years, he also received a homestead deduction for his home in Converse, Indiana. To Nieto, they were both primary residences because he was in one place or the other. He was unaware of the law prohibiting him from having two homestead deductions; he merely relied on the advice given to him by the employee in Texas. *Nieto testimony.*
- d) After finding out about the investigation into his Indiana homestead deduction, Nieto attempted to correct the mistake by paying any taxes he owed in Texas. An official in Texas agreed to remove the deduction from his house trailer, but would not bill Nieto for the three years in question because of the ongoing investigation into his homestead deduction in Indiana. *Nieto testimony.*

6. The Assessor's case:

- a) On August 26, 2011, Nieto took title to the property in Converse. On August 17, 2012, he applied for a homestead deduction for that property. Nieto also obtained title to real estate in Pharr, Texas on or about November 3, 2011, for which he received a homestead deduction and an over-65 deduction. *Betzner testimony; Resp't Exs. A-C.*
- b) The Miami County Auditor hired Tax Management Associates to conduct an audit of homestead deductions. On the audit questionnaire, Nieto disclosed that he had claimed homestead deductions on his property in Converse and his property in Texas. He further disclosed that he filed his 2014, 2015, and 2016 income tax returns in Texas. And the audit showed that his vehicle was registered in Texas as well. He also had a Texas driver's license until right before he reapplied for the new, updated homestead deduction. *Betzner testimony; Resp't Ex. D.*
- c) After Betzner spoke to officials from the Hildago County Appraisal District in Texas, they removed Nieto's homestead deduction for 2017. But they did not remove it for 2014, 2015, or 2016 because Indiana officials were the ones doing an audit. *Betzner testimony; Resp't Ex. E.*
- d) The Miami County Auditor sent Nieto a letter dated January 2, 2018 notifying him of the results of the audit and informing him of what to do if he wanted to contest the

removal of his Indiana homestead deduction. The Auditor sent an additional letter on February 21, 2018 to notify Nieto that a lien had been recorded to collect the back taxes and penalties he owed because of the audit. Nieto subsequently paid those taxes and penalties on May 10, 2018. *Betzner testimony; Resp't Exs. I, J.*

- e) Because a person cannot have two homestead deductions, Nieto is not entitled to a deduction on his property in Converse for 2014, 2015, or 2016. *Downs argument.*

ANALYSIS

- 7. Nieto claims he is entitled to have his homestead deduction reinstated for the 2014-2016 assessment years. Indiana Code § 6-1.1-12-37 provides a standard deduction from the assessed value for a homestead, which the statute defines as a dwelling that an individual owns and uses as his principal place of residence and up to one acre of surrounding land. Ind. Code § 6- 1.1-12-37(a)-(c). However, individuals are not eligible to receive the homestead deduction if they are already receiving (1) a homestead deduction in their name, or (2) an equivalent deduction in another state. Ind. Code § 6-1.1-12-37(f)(2).
- 8. Here, Nieto asserted that his property in Converse and his property in Texas are both primary residences. But we need not decide whether his property in Converse qualified as Nieto's principle place of residence because he admittedly received a deduction similar to Indiana's homestead deduction on his property in Texas during 2014, 2015, and 2016. We therefore conclude Nieto was ineligible to receive Indiana's homestead deduction for those assessment years.

FINAL DETERMINATION

- 9. In accordance with the above findings and conclusions, Nieto is not entitled to have his homestead deduction reinstated for the 2014-2016 assessment years.

ISSUED: February 28, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.